



Allen H. Reynolds
Director

**STATE OF LOUISIANA
DEPARTMENT OF CIVIL SERVICE**

P. O. BOX 94111, CAPITOL STATION
<http://www.dscs.state.la.us>
BATON ROUGE, LA 70804-9111

Legal Section
(225) 342-8544
Fax (225) 342-0966

TDD 1-800-846-5277

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Dear Human Resource Professionals, Managers, and Employees:

There are two subjects that I would like to address in this newsletter. The first regards holiday pay and flexible work schedules, and the second regards documents supporting PPR ratings.

HOLIDAY PAY

On July 28, 2000 the Legislative Auditor opined that unless there was an "overriding governmental interest" employees whose regular workday was more than eight hours were entitled to only eight hours of holiday pay on a statutory or declared holiday. If the employee was to receive a full pay check for forty hours of work in the holiday week, the taking of annual leave for the difference between eight hours and the regularly scheduled hours would be necessary. These employees who were required to do this were those who were working such flexible schedules "for their own convenience." Employees working at twenty-four hour facilities were excluded from this requirement.

State managers can immediately recognize that there are a significant number of legitimate governmental reasons for allowing flexible work schedules that result in an employee working more than eight hours in a regularly scheduled workday. Those reasons could include recruitment and retention of employees, the morale of the workforce, and the efficiency of the workforce. In such a case, annual leave would not have to be taken for the employee to get a full paycheck for forty hours of work in the workweek in which the holiday fell because an overriding governmental interest would exist. There was at least one state manager, however, who did not recognize the existence of such an overriding governmental interest and required the taking of annual leave for three employees who worked four ten-hour days in a regularly scheduled workweek. These employees appealed.

In the **Appeal of Dearbone**, et al., Docket No. 14262, rendered December 14, 2001, the three employees worked four ten-hour shifts for a total workweek of forty hours, and were required to take two hours of annual leave on each paid holiday in order to make-up the difference between the eight hour workday recognized by the Legislative Auditor and the appellants' ten hour workdays. The appellants asserted that Civil Service Rule 11.7(b) was violated. That rule states that "annual leave shall not be charged for non-work days."

The Referee found without further comment that the work schedule of the three appellants was set by each of their supervisors. The Referee briefly discussed the Legislative Auditor's opinion, but based upon cited jurisprudence, concluded that the "days" of rest and legal holidays in R.S. 1:55 referred to twenty-four hour periods of time. The Referee concluded that "a holiday is a twenty-four hour period," and that when a holiday falls on a regularly scheduled workday of a

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ten hour-a-day employee the employee is entitled to take the ten hours without penalty. The Referee concluded that Civil Service Rule 11.7(b) was violated when annual leave was charged for the hours over eight hours.

This decision of the Referee is now final and must be deemed binding upon appointing authorities of state classified employees. Where state classified employees are not required to work, they must be given their full regularly scheduled workday off from work with pay on a holiday or on a designated holiday without charge to annual leave. A holiday must be considered to be a full twenty-four hours.

DOCUMENTS SUPPORTING PPR'S

The decision of the Civil Service Commission regarding the documentation required on a PPR was rendered on application for review in the **Appeal of Besson**, Docket No. 14296. At issue was Civil Service Rule 10.6(a). That rule defines what constitutes an “official rating” and provides in pertinent part that the rating supervisor shall present the form to the employee and shall “provide documentation to support any factor rated “needs improvement” or “poor.”

The Referee had interpreted that rule to mean that when a rating was given to the employee, “documentation” had to be actually attached to the form to support a “needs improvement” or a “poor rating.” Failing such attachment, the Referee concluded that the overall “needs improvement” of the appellant was deficient as not being in accordance with that rule and, consequently, should be vacated. The Civil Service Commission reversed. It recognized that:

“The goal of the Performance Planning and Review (PPR) process established in Chapter 10 is to tell the employee what is expected of him or her in the coming rating period, to require communication between the supervisor and the employee regarding the employee’s performance during the rating period, and to cause the quality of that performance to be reflected in the rating.”

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“Effective communication is the key to the process.”

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“[T]he goal of the rating process is not just the rating, but is the communication through the rating period coupled with the rating.”

The Commission further recognized that at the workplace both verbal and written communication about the performance of a subordinate is given by a supervisor. The rating for a particular factor should reflect the quality of performance that was achieved by the employee with this written and verbal direction. Where the rating is a “needs improvement” or “poor” the employee is entitled not to be surprised by the rating, but to have been made aware through the rating period of the concerns about performance. The Commission stated it expected that the comments entered on the

form itself would support the rating and, also, in order to avoid surprise to the employee, must reference behavior that was the subject of communication through the rating period. As a technical matter, the Commission concluded that the “documentation” of Rule

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10.6(a) was the comments on the form that “referenced behavior that was the subject of communication through the rating period.” That is, these comments are the “documentation” to be provided when the form is presented to the employee. The reason for this definition is because of the two types of communication that occur between the supervisor and a subordinate.

Where the supervisor communicates with the subordinate in writing through the rating period, interpreting the word “documentation” to include the writings given to the employee previously would be to effect a technical requirement with no substantive value, and, also, to fix a requirement similar to the strict detailed reasons necessary to effect disciplinary actions. The Commission specifically rejected both concepts.

In regard to verbal communication, the Commission recognized that such communication is a viable and common means of telling an employee about deficiencies in performance, but to interpret “documentation” as used in the subject rule as had the Referee would deny the validity of this means of communication. That is, verbal communication that occurred in the past could never be presented to the employee along with the PPR form.

As mentioned, however, the Commission recognized the employee is entitled not to be surprised by a bad rating, and, as provided in the rules, is entitled to have a rating reviewed. During that review process, the Commission recognized that the rating supervisor should be capable of demonstrating that communication pointing out deficiencies had occurred. Where the communication was written, such demonstration would be readily available. Where the communication was verbal, however, and to avoid a swearing contest during the rating review, the Commission held that “verbal communications must be capable of being supported with contemporaneous notes made by the rating supervisor, or some other contemporaneous writing.” In other words, a rating supervisor must make notes at the time, or very near the time, that a verbal communication about performance was given to the employee and save those notes in order to establish the fact of communication on subjects reflected in the comments.

I commend the entire decision to your reading. These decision, of course, can be obtained through the link to appeal opinions on our web site.

Sincerely,

Robert B. Boland, Jr.
General Counsel